

# Email to Fax Delivery

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Joan Simmons // Paralegal  
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97661.00013

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:	)	RECEIVED
	)	
Claude Q.C. Hayes	)	SEP 14 2012
	)	
Patent No: 6,264,854	)	OFFICE OF PETITIONS
	)	
Issue Date: July 24, 2001	)	

For: **HEAT ABSORBING TEMPERATURE CONTROL DEVICES AND METHOD**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF CLAUDE Q.C. HAYES IN SUPPORT OF PETITION UNDER**  
**37 C.F.R. 1.378(b) TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF**  
**MAINTENANCE FEE AND TO REINSTATE PATENT**

I, Claude Q.C. Hayes, do hereby declare as follows:

1. I am the sole inventor and owner of the subject matter set forth in U.S. Patent No. 6,264,854 (the "854 Patent").
2. I have worked with Basam E. Nabulsi, Esq., in connection with my patent portfolio, which includes more than a dozen U.S. patents, for at least ten (10) years. I originally began working with Mr. Nabulsi when he was with a law firm called "Cummings & Lockwood", and continued to work with Mr. Nabulsi when he moved to his current law firm, "McCarter & English".
3. During my years working with Mr. Nabulsi, I have found him to be attentive and reliable in addressing deadlines. I have also interacted regularly with his paralegal, Ms. Joan Simmons, and have found her to be knowledgeable, reliable and responsive.
4. I have provided Mr. Nabulsi with standing instructions to pay any and all maintenance fees in connection with my patent portfolio, including specifically the '854 Patent.

ME1 14041255v.1

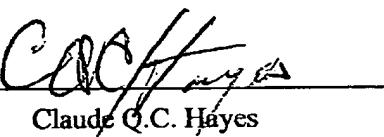
5. Consistent with my instructions to pay any and all maintenance fees in connection with my patent portfolio, I note that Mr. Nabulsi's firm invoiced me for payment of the second maintenance fee for the '854 Patent based on his mistaken belief that the second maintenance fee had been timely paid, and I promptly paid the invoice to Mr. Nabulsi's firm. Similarly, I have independently arranged for prompt payment of all annuities associated with foreign counterparts to my entire patent portfolio, including specifically all counterparts to the '854 Patent, and have promptly paid all invoicing associated with those annuity payments. My careful attention to these accounts reflects the importance that I attach to maintenance of my entire patent portfolio on a worldwide basis.
6. I have licensed certain of my patents to third parties. Due to confidentiality considerations, I will not provide the name of the specific licensee referenced below.
7. On November 16, 2011, I received a letter from a licensee dated November 15, 2011, informing me that the licensed patents had expired and had entered the public domain. Based on the licensee's identity, I concluded that the issue related to my "boric acid" patents. The licensee's letter invited me to provide any contrary information to them by December 15, 2011.
8. I immediately contacted Mr. Nabulsi's office by telephone about mid-day on November 16, 2011, and when I could not reach Mr. Nabulsi or Ms. Simmons, I spoke with the receptionist. I was informed that Mr. Nabulsi was out of the country and that Ms. Simmons was away from her desk.
9. Shortly thereafter, I called Ms. Simmons directly and explained the situation. In particular, I requested that Ms. Simmons provide me with the expiration dates for my boric acid patents by immediate email, with a follow-up letter from Mr. Nabulsi setting forth the expiration dates for use in responding to my licensee.

10. When contacting Mr. Nabulsi's office and speaking with Ms. Simmons on November 16<sup>th</sup>, I was concerned as to the status of my boric acid patents, but had no reason to believe that any of my patents, including specifically the '854 Patent, had expired due to a failure to pay an applicable maintenance fee.
11. Mr. Nabulsi called me from Japan on November 16<sup>th</sup> and advised me that the USPTO records showed that the '854 Patent had lapsed due to non-payment of a maintenance fee, but that the accuracy of the USPTO information was unconfirmed. Mr. Nabulsi advised me that M&E's records showed that all applicable maintenance fees had been timely paid. Mr. Nabulsi indicated that he was cutting his trip short and flying back immediately to coordinate the necessary investigation and responsive action.
12. Over the next few days, Mr. Nabulsi spoke with me on several occasions to keep me abreast of his investigation and findings. In particular, Mr. Nabulsi advised me that one of my "boric acid" patents, the '854 Patent, had in fact expired due to non-payment of the second maintenance fee, but that another of my "boric acid" patents remained in full force.
13. It was clear from my interactions with Mr. Nabulsi and Ms. Simmons in November 2011 that they were unaware of the lapse of the '854 Patent until my call and that, prior to undertaking an investigation, they were of the belief that all of my patents were in good standing.
14. Once it became clear that the '854 Patent had in fact lapsed due to non-payment of the second maintenance fee, Mr. Nabulsi made clear that he would take timely steps to request that the USPTO revive the '854 Patent on my behalf.
15. As outlined above, I was unaware that the '854 Patent had lapsed until I received a letter from a licensee on November 16, 2011, and the failure to pay such maintenance fee in a timely fashion was directly contrary to my standing instructions to

Mr. Nabulsi. Upon receipt of the licensee's letter on November 16, 2011, I took immediate action to understand and address the issue with the '854 Patent.

I, the undersigned, declare further that all statements made herein are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 29 Aug 2012

By:   
Claude Q.C. Hayes

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OFFICE OF PETITIONS  
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ATTORNEYS AT LAW

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ATTN: Office of Petitions	USPTO	571-273-8300	571-272-3222

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FROM:	EMAIL:	FAX NO:	PHONE NO:
Basam E. Nabulsi/03067	bnabulsi@mccarter.com	203.399.5820	203.399.5920

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September 10, 2012

Total number of pages including cover: 9

Client/Matter: **97661.00013**

Call, If Problems: **203.399.5922**

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[www.mccarter.com](http://www.mccarter.com)

U.S. Patent No. 6,264,854  
U.S. Patent Application Serial No. 09/546,361  
Heat Absorbing Temperature Control Devices and Method  
Our Reference: 997661.00013

Dear Sir:

Enclosed are the following documents: (i) Response to Request for Information, (ii) Declaration of Claude Q.C. Hayes In Support of Petition Under 37 CFR 1.378(b) to Accept Unavoidably Delayed Payment of Maintenance Fee and to Reinstate Patent, (iii) Declaration of Joan Simmons In Support of Petition Under 37 CFR 1.378(b) to Accept Unavoidably Delayed Payment of Maintenance Fee and to Reinstate Patent, and (iv) a Supplemental Declaration of Basam E. Nabulsi In Support of Petition Under 37 CFR 1.378(b) to Accept Unavoidably Delayed Payment of Maintenance Fee and to Reinstate Patent.

Respectfully,

Basam E. Nabulsi  
Registration No. 31,645

Enclosures

THE INFORMATION CONTAINED IN THE FACSIMILE MESSAGE IS ATTORNEYS' PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE PERSON OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT (OR SOMEONE RESPONSIBLE TO DELIVER TO THE INTENDED RECIPIENT), PLEASE BE AWARE THAT ANY DISSEMINATION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US BY TELEPHONE IMMEDIATELY AT 203.399.5900 AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U. S. POSTAL SERVICE. THANK YOU.

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PATENT

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Claude Q.C. Hayes	)	SEP 14 2012
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For: **HEAT ABSORBING TEMPERATURE CONTROL DEVICES AND METHOD**

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**RESPONSE TO REQUEST FOR INFORMATION**

Dear Sir:

On February 2, 2012, Claude Q.C. Hayes ("Patentee") filed a Petition to Accept Unavoidably Delayed Payment of Maintenance Fee and Reinstate Patent ("Petition") in connection with U.S. Patent No. 6,264,854 (hereinafter "'854 Patent"). On July 23, 2012, the U.S. Patent Office mailed a Request for Information ("Request") in connection with the Petition, setting a two (2) month non-extendable period for response. Accordingly, the deadline for response to the Request is **September 23, 2012**. Patentee respectfully submits that the present submission is timely and requests that the additional information and documentation submitted herewith be considered in connection Patentee's Petition to reinstate the '854 Patent.

As stated in the Petition, it is respectfully submitted that the entire delay for payment of the second maintenance fee was unavoidable.

As set forth in the Request, Patentee has been requested to address a series of points. Each of the points is addressed in turn herein and by way of the enclosed information and documentation.

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1. Statement from every person with first-hand knowledge of circumstances surrounding the delay in paying the maintenance fee, including a statement from Claude Hayes explaining when and how he discovered the patent was expired.

Patentee provided a Declaration of Basam E. Nabulsi (with exhibits) ("Nabulsi Declaration") in support of the Petition. The Nabulsi Declaration is expressly incorporated into this submission by reference. As stated in the Nabulsi Declaration, Mr. Nabulsi has first-hand knowledge of certain circumstances surrounding the delay in paying the maintenance fee for the '854 Patent, and such first-hand knowledge is addressed in the Nabulsi Declaration.

By the present submission, Patentee provides additional supporting Declarations in support of the Petition. In particular, Patentee submits herewith:

- (i) a Declaration of Claude Q.C. Hayes in Support of Petition Under 37 C.F.R. 1.378(b) to Accept Unavoidably Delayed Payment of Maintenance Fee and Reinstate Patent ("Hayes Declaration");
- (ii) a Declaration of Joan Simmons in Support of Petition Under 37 C.F.R. 1.378(b) to Accept Unavoidably Delayed Payment of Maintenance Fee and Reinstate Patent (with exhibits) ("Simmons Declaration"); and
- (iii) a Supplemental Declaration of Basam E. Nabulsi in Support of Petition Under 37 C.F.R. 1.378(b) to Accept Unavoidably Delayed Payment of Maintenance Fee and Reinstate Patent ("Supplemental Nabulsi Declaration").

As set forth in the original Nabulsi Declaration, the Supplemental Nabulsi Declaration, the Hayes Declaration and the Simmons Declaration, each of the declarants has first-hand knowledge of circumstances surrounding the delay in paying the maintenance fee for the '854 Patent, including a statement from Claude Hayes explaining when and how he discovered the patent was expired.

2. Describe steps that were in place to ensure that the maintenance fee was timely paid, including an explanation of who was responsible for tracking and paying the maintenance fee, and the method this person, or entity, used for tracking the maintenance fee.

As noted above, Patentee previously provided the Nabulsi Declaration in support of the Petition, and submits herewith the Simmons Declaration and the Supplemental Nabulsi Declaration. The information set forth in the Nabulsi Declaration, the Supplemental Nabulsi Declaration and the Simmons Declaration directly addresses the steps that were in place to ensure that the second maintenance fee for the '854 Patent was timely paid, including an explanation of who was responsible for tracking and paying the maintenance fee, and the method the responsible person used for tracking the maintenance fee. [See Nabulsi Declaration, ¶¶ 5-26; Supplemental Nabulsi Declaration, ¶¶ 4-23; and Simmons Declaration ¶¶ 1-41.]

3. For error by employee in performance of a clerical function, identification of the specific error, the individual who made the error and the business routine in place for performing the action which resulted in the error, including demonstration of sufficient training and experience, including a statement from the supervisor of the clerical employee.

As noted above, Patentee previously provided the Nabulsi Declaration in support of the Petition, and submits herewith the Simmons Declaration and the Supplemental Nabulsi Declaration. The information set forth in the Nabulsi Declaration, the Supplemental Nabulsi Declaration and the Simmons Declaration directly identifies the specific error that gave rise to the failure to pay the second maintenance fee for the '854 Patent, the individual who made the error and the business routine in place for performing the action which resulted in the error, as well as a demonstration of the training and experience of the responsible individual and a statement from the supervisor of the clerical employee. [See Nabulsi

Declaration, ¶¶ 5-26 and associated exhibit(s); Supplemental Nabulsi Declaration, ¶¶ 4-23; and Simmons Declaration ¶¶ 1-41 and associated exhibit(s).]

4. Relative to the docketing system used by McCarter & English, (Computer Packages, Inc.), additional information regarding its use in the industry and why it is a reliable system, the data required to be entered for each patent, and cross checks in the docketing system engineered to compensate for data entry errors.

As noted above, Patentee previously provided the Nabulsi Declaration in support of the Petition, and submits herewith the Simmons Declaration and the Supplemental Nabulsi Declaration. The information set forth in the Nabulsi Declaration, the Supplemental Nabulsi Declaration and the Simmons Declaration directly addresses the docketing system used by McCarter & English, (Computer Packages, Inc.), including additional information regarding its use in the industry and why it is a reliable system, the data required to be entered for each patent, and cross checks in the docketing system engineered to compensate for data entry errors. [See, e.g., Nabulsi Declaration, ¶¶ 5-12 and associated exhibit(s); Supplemental Nabulsi Declaration, ¶¶ 5-10; and Simmons Declaration ¶¶ 5-21 and associated exhibit(s).]

\* \* \* \* \*

Patentee respectfully submits that reinstatement of the '854 Patent pursuant to 37 CFR 1.378(b) is warranted because Patentee's failure to pay the second maintenance fee for the subject patent was unavoidable. In particular and as previously noted, a "docketing error" by an employee in the performance of a clerical function supports a finding of "unavoidable delay" provided:

- a. The docketing error was the cause of the delay at issue;
- b. A business routine was in place for performing the clerical function which was reasonably relied upon to avoid errors; and

c. The employee who erred was sufficiently trained and experienced with regard to the function and routine such that reliance upon the employee represented the exercise of due care.

See MPEP 711.03(c); *In re Patent No. 5,917,913*, 2008 Commr. Pat. LEXIS 49 (Sept. 25, 2008); *In re Egbers*, 6 USPQ2d 1869, 1872 (Comm'r Pat. 1988), *rev'd on other grounds sub nom., Theodor Groz & Sohne & Ernst Bechert Nadelfabrik KG v. Quigg*, 10 USPQ2d 1787 (D.D.C. 1988); *In re Katrapat*, 6 USPQ2d 1863, 1867-68 (Comm'r Pat. 1988).

Patentee respectfully submits that -- based on all relevant facts and circumstances as set forth in the Nabulsi Declaration, the Supplemental Nabulsi Declaration, the Hayes Declaration and the Simmons Declaration -- Patentee has demonstrated that the entire delay for payment of the second maintenance fee for the '854 Patent was unavoidable.

In particular, Patentee respectfully submits that the facts established by the foregoing Declarations fully satisfy the requirements associated with the "docketing error" standard for reinstatement based on an "unavoidable delay" in maintenance fee payment, and support prompt reinstatement of the '854 Patent under 37 CFR 1.378(b). Moreover, the USPTO's failure to update the mailing address for the '854 Patent – as requested by Patentee in 2005 – defeated Patentee's opportunity to take immediate corrective action with respect to the underlying docketing error, e.g., during the surcharge period, thereby further demonstrating the "unavoidability" associated with Patentee's failure to timely pay the second maintenance fee associated with the '854 Patent.

For at least the foregoing reasons, it is respectfully submitted that the requirements of 37 CFR 1.378(b) are fully satisfied and that prompt reinstatement of the '854 Patent is proper. Prompt action to that effect is earnestly solicited.

Respectfully submitted,



Basam E. Nabulsi, Reg. No. 31,645  
Attorney for Patentee

McCarter & English LLP  
Canterbury Green  
201 Broad Street, 9<sup>th</sup> Floor  
Stamford, CT 06901  
Telephone: 203-399-5920  
Facsimile: 203-399-5820

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:	)	RECEIVED
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For: **HEAT ABSORBING TEMPERATURE CONTROL DEVICES AND METHOD**

Mail Stop Petition  
Commissioner for Patents  
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**DECLARATION OF CLAUDE O.C. HAYES IN SUPPORT OF PETITION UNDER**  
**37 C.F.R. 1.378(b) TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF**  
**MAINTENANCE FEE AND TO REINSTATE PATENT**

I, Claude Q.C. Hayes, do hereby declare as follows:

1. I am the sole inventor and owner of the subject matter set forth in U.S. Patent No. 6,264,854 (the "854 Patent").
2. I have worked with Basam E. Nabulsi, Esq., in connection with my patent portfolio, which includes more than a dozen U.S. patents, for at least ten (10) years. I originally began working with Mr. Nabulsi when he was with a law firm called "Cummings & Lockwood", and continued to work with Mr. Nabulsi when he moved to his current law firm, "McCarter & English".
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4. I have provided Mr. Nabulsi with standing instructions to pay any and all maintenance fees in connection with my patent portfolio, including specifically the '854 Patent.

MEI 14041255v.1

5. Consistent with my instructions to pay any and all maintenance fees in connection with my patent portfolio, I note that Mr. Nabulsi's firm invoiced me for payment of the second maintenance fee for the '854 Patent based on his mistaken belief that the second maintenance fee had been timely paid, and I promptly paid the invoice to Mr. Nabulsi's firm. Similarly, I have independently arranged for prompt payment of all annuities associated with foreign counterparts to my entire patent portfolio, including specifically all counterparts to the '854 Patent, and have promptly paid all invoicing associated with those annuity payments. My careful attention to these accounts reflects the importance that I attach to maintenance of my entire patent portfolio on a worldwide basis.
6. I have licensed certain of my patents to third parties. Due to confidentiality considerations, I will not provide the name of the specific licensee referenced below.
7. On November 16, 2011, I received a letter from a licensee dated November 15, 2011, informing me that the licensed patents had expired and had entered the public domain. Based on the licensee's identity, I concluded that the issue related to my "boric acid" patents. The licensee's letter invited me to provide any contrary information to them by December 15, 2011.
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9. Shortly thereafter, I called Ms. Simmons directly and explained the situation. In particular, I requested that Ms. Simmons provide me with the expiration dates for my boric acid patents by immediate email, with a follow-up letter from Mr. Nabulsi setting forth the expiration dates for use in responding to my licensee.

10. When contacting Mr. Nabulsi's office and speaking with Ms. Simmons on November 16<sup>th</sup>, I was concerned as to the status of my boric acid patents, but had no reason to believe that any of my patents, including specifically the '854 Patent, had expired due to a failure to pay an applicable maintenance fee.
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Mr. Nabulsi. Upon receipt of the licensee's letter on November 16, 2011, I took immediate action to understand and address the issue with the '854 Patent.

I, the undersigned, declare further that all statements made herein are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 29 Aug 2012

By:   
Claude Q.C. Hayes

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PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent of:  
Claude Q.C. Hayes  
Patent No: 6,264,854  
Issue Date: July 24, 2001

**For: HEAT ABSORBING TEMPERATURE CONTROL DEVICES AND METHOD**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF JOAN SIMMONS IN SUPPORT OF PETITION UNDER  
37 C.F.R. 1.378(b) TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE AND TO REINSTATE PATENT**

I, Joan Simmons, do hereby declare as follows:

### Experience and Responsibilities

1. I have worked as an intellectual property professional in the field of patent preparation, prosecution and maintenance for twenty five (25) years. I have been employed in this capacity at McCarter & English, LLP ("M&E") and a predecessor law firm, Cummings & Lockwood ("C&L"), from January 27, 1999, to the present. Prior to my employment by C&L, I worked in the legal department at U.S. Surgical Corporation (now Covidien) as part of the patent group from August 10, 1987 thru October 30, 1998.
2. Since January 1989, when Basam E. Nabulsi, Esq., joined U.S. Surgical Corporation ("USSC") as a patent attorney, I have worked extensively with Mr. Nabulsi in support of his patent practice. Shortly after Mr. Nabulsi left USSC to become a partner at C&L, I joined him at C&L.

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3. The legal department at USSC included a docket clerk whose responsibility it was to docket relevant patent and trademark deadlines. I periodically filled in for the USSC docket clerk, e.g., during vacations and/or illnesses, but did not have primary docketing responsibility during my tenure at USSC. Rather, my responsibilities at USSC involved other patent-related activities, including correspondence with the U.S. Patent and Trademark Office ("PTO"), with foreign associates, with outside counsel and with internal USSC personnel. In connection with my duties at USSC, I was responsible for tracking and addressing applicable patent-related deadlines with in-house USSC attorneys, outside attorneys working with USSC, and foreign associates working with USSC.
4. The patent group at C&L also had a full-time docket clerk. Accordingly, I did not have primary docketing responsibilities at C&L, but would periodically fill in for the group's docket clerk, e.g., during vacations and illnesses. During my tenure at C&L, my responsibilities primarily involved other patent-related activities, including PTO submissions, client communications, and foreign associate communications. In connection with my duties at C&L, I was responsible for tracking and addressing applicable patent-related deadlines with C&L attorneys, clients, and foreign associates working with C&L. In addition, during my tenure at C&L, I was responsible for annuity and maintenance fee payments in connection with patent portfolios handled by the attorneys that I supported.
5. In October 2003, Mr. Nabulsi and I departed C&L and joined M&E as founding members of M&E's Stamford, CT office. M&E had an existing patent practice and we migrated the docket information for clients that moved with us from C&L to M&E into M&E's computerized docket system.
6. Since October 2003 -- when I joined M&E -- to the present, I have been responsible for tracking deadlines related to Office Actions, Notices of Allowance, maintenance

fees, foreign annuities and other docketed dates associated with filing, prosecution and maintenance of patents and patent applications that are managed by or originated from M&E's Stamford office. This responsibility has extended to thousands of patents and patent applications.

7. Since October 2003 – when I joined M&E -- to the present, M&E has utilized a computerized docket system that is licensed from Computer Packages, Inc. (“CPI”) to docket and track patent prosecution and renewal fee deadlines for the totality of the patent portfolio managed by M&E across its seven (7) offices, including specifically the patent portfolio managed from the Stamford office (the “Stamford Portfolio”).
8. Since at least early 2006 to the present, my responsibilities have included all aspects of patent docketing and maintenance for patent files that are managed by or originated from M&E's Stamford office. I am intimately familiar with the operation and use of M&E's CPI docket system and electronic submissions to the USPTO, including specifically electronic payment of maintenance fees. In addition, I receive ongoing CPI docket system training from CPI trainers.
9. Since at least early 2006, I have accurately and independently docketed thousands of application deadlines and successfully coordinated maintenance fee payments for many hundreds of patents on behalf of M&E clients. In performing these duties, I have routinely recorded and monitored deadlines and associated deposit account entries.

CPI Docket System

10. In connection with the preparation of this Declaration, I have researched use of the CPI docket system by reviewing information available at the CPI website ([www.computerpackages.com](http://www.computerpackages.com)) and speaking with CPI personnel. Based on that

research, I have determined that the CPI docket system is widely used by the patent community, as evidenced by the following:

- a. As set forth at the CPI website, "Computer Packages is the oldest company (over 43 years) providing Patent and Trademark Intellectual Property Management Systems and Patent Annuity Payment Services." See website printout appended hereto as Exhibit A.
- b. The CPI docket system is used and relied upon by scores of companies and law firms, as reflected on the eleven (11) page client list as of June 30, 2012, obtained from CPI, a copy of which is appended hereto as Exhibit B.

11. In my judgment and experience, the CPI docket system is a reliable tool for managing patent-related deadlines. In particular, in the almost ten (10) years that I have relied upon and used the CPI docket system, the CPI docket system has consistently provided actionable deadlines in a timely and reliable manner. The CPI docket system allows users to generate reports in various formats, thereby permitting the data, e.g., upcoming deadlines, to be sorted and/or filtered into actionable subparts. For example, reports are routinely generated based upon date ranges, responsible attorney, action type, client name, and combinations thereof. In this way, the CPI docket system supports effective monitoring of upcoming deadlines and patent-related actions.

12. In creating a docket record in the CPI docket system, various fields are provided by the CPI docket system for entry of relevant application-related information. I have prepared a summary of the basic information that is entered with respect to a data record in the CPI docket system, a copy of which is appended hereto as Exhibit C. Once a docket record is created, all further activities with respect to a patent application and/or issued patent, both domestic and international, is captured in the

CPI docket system. Comment fields are also provided for the capture of specific information, e.g., client instructions, follow-up actions and the like, and are retained even after the docketed action is completed and removed from the active docket.

13. In practice and with respect to the Stamford Portfolio, since at least early 2006, I have been primarily responsible for entering relevant information into the CPI docket system to establish and track patent-related deadlines. In my absence, the Stamford office includes a second, fully trained docket clerk who handles docket responsibilities. We also have the ability to utilize fully trained docket clerks who are physically located in other M&E offices (Boston, MA; Hartford, CT; Newark, NJ; Wilmington, DE) on an as-needed basis. Prior to early 2006, prior docketing responsibility for the Stamford Portfolio was handled by a docket clerk physically located in M&E's Hartford, CT office.

U.S. Patent No. 6,264,854 – Second Maintenance Fee

14. U.S. Patent No. 6,264,854 entitled "Heat Absorbing Temperature Control Devices and Method" to Hayes (the "'854 Patent") issued on July 24, 2001. The M&E reference number for the '854 Patent is "97661.00013". I am the individual responsible for maintenance fee payment and docket entries associated with the '854 Patent.

15. The window for payment of the second maintenance fee associated with the '854 Patent opened on July 24, 2008, and closed on July 24, 2009.

16. Various entries associated with payment of the second maintenance fee for the '854 Patent were established in M&E's CPI docket system based upon the issue date of the '854 Patent. A copy of a printout from M&E's CPI docket system showing a chronological list of due dates associated with the '854 Patent – associated with the client/matter designation of 97661.00013 -- is appended hereto as Exhibit D. As

shown on the noted CPI printout, M&E's CPI docket system included the following entries with respect to the second maintenance fee for the '854 Patent:

- a. "Reminder 2<sup>nd</sup> MFEE due 1/24" -- Due Date: 24-Nov-2008  
(Reminder)
- b. "2<sup>nd</sup> MAINT FEE DUE" -- Due Date: 24-Jan-2009 (Due Date)
- c. "2<sup>nd</sup> MAINT FEE DUE" -- Due Date: 24-Jul-2009 (Final)

17. As also reflected on the CPI printout appended hereto as Exhibit D, the deadlines associated with the second maintenance fee for the '854 Patent were removed from M&E's CPI docket system on November 23, 2008. As explained below, the noted deadlines associated with the second maintenance fee were removed from M&E's CPI docket system by me in error.
18. M&E maintains several Deposit Accounts with the U.S. Patent and Trademark Office ("USPTO") in connection with its patent-related activities. M&E's Stamford office utilizes Deposit Account No. 503570 (the "Deposit Account"). A copy of a printout associated with activities in the Deposit Account for the month of November 2008 is appended hereto as Exhibit E.
19. As shown on the appended Deposit Account printout, the maintenance fee for U.S. Patent No. 6,238,591 (the "'591 Patent") was posted to the Deposit Account on November 24, 2008. Of note, November 24, 2008 was a "Monday" and any Deposit Account activity from the weekend, e.g., Sunday, November 23, 2008, would not be posted to the Deposit Account until Monday, November 24<sup>th</sup>.
20. When USPTO fees are paid electronically using the Deposit Account, the individual authorizing the payment identifies the "attorney docket number" to be associated with the activity. Thus, even though the '591 Patent is a distinct Hayes patent and is associated with client/matter designation 97771.00016, I incorrectly

correlated the payment with client/matter designation 97771.00013, i.e., the '854 Patent.

21. Based on my mistaken belief that the second maintenance fee for the '854 Patent had been paid on November 23, 2008, I removed the associated deadlines from M&E's docket system on November 23, 2008. The removal of these deadlines from the CPI docket system on November 23, 2008 is reflected in the printout appended hereto as Exhibit E.
22. Consistent with my mistaken belief that the second maintenance fee for the '854 Patent had been paid on November 23, 2008, I prepared a reporting letter for Mr. Nabulsi's review and signature that was forwarded to Hayes on November 24, 2008 in connection with client/matter designation 97661.00013. A copy of the reporting letter is appended hereto as Exhibit F.
23. The noted reporting letter is physically located in M&E's physical file for the '854 Patent, i.e., the file associated with client/matter designation 97661.00013. However, the subject heading for the noted reporting letter references the '591 Patent. Thus, at the time that the reporting letter was dispatched to Hayes, the incorrect correlation of the '591 Patent with client/matter designation 97661.00013 was not recognized by me or Mr. Nabulsi.
24. M&E's physical file for the '854 Patent (client/matter designation 97661.00013) also contains a maintenance fee printout dated November 24, 2008, reflecting payment of the maintenance fee for the '591 Patent. A copy of the maintenance fee printout is appended hereto as Exhibit G.
25. In the context of maintenance fee docketing and related maintenance fee payments, Mr. Nabulsi acts as a "cross check" on my actions on behalf of his clients. In particular, when the reporting letter dated November 23, 2008, was provided to Mr. Nabulsi for review and execution, Mr. Nabulsi was also provided with the

entire file for the '854 patent together with relevant enclosures for the proposed letter. Unfortunately, Mr. Nabulsi did not recognize the disconnect between the subject heading of the reporting letter and the physical file that was provided to him with the reporting letter. Mr. Nabulsi also did not recognize that the maintenance fee printout contained in the physical file related to a different Hayes patent, i.e., the '591 Patent.

26. As a general matter and in my experience, Mr. Nabulsi carefully reviews all correspondence that I prepare for his signature and follows up with me on any inconsistencies or other issues that he may note with respect to the correspondence and underlying action. Mr. Nabulsi and I also review docket reports on a frequent basis – almost daily – to ensure that deadlines are being addressed in a timely fashion. In this instance, however, neither of us recognized the errors noted above.
27. As is apparent from the foregoing materials, the mistaken non-payment of the second maintenance fee for the '854 Patent was based on my incorrect identification of the maintenance fee paid on Sunday, November 23, 2008, which led to removal of the docketed deadlines associated with such payment from M&E's docket system.

Misdirected USPTO Communications

28. Turning to the period after November 2008, we did not receive a Maintenance Fee Reminder from the USPTO indicating that the second maintenance fee for the '854 Patent had not been timely paid on behalf of Hayes. The failure to receive a standard reminder from the USPTO eliminated a potential opportunity to identify the above-noted error and take prompt corrective action. The USPTO's failure to provide such reminder occurred despite timely action on the part of Mr. Nabulsi and me to provide an updated mailing address to the USPTO with respect to the '854 Patent.

29. When Mr. Nabulsi moved his practice from C&L to M&E in October 2003, I assisted Mr. Nabulsi in taking steps to ensure that future USPTO communications related to the Stamford Portfolio would be received by M&E by updating relevant USPTO records.
30. In particular, on December 5, 2005, I assisted Mr. Nabulsi in preparing and filing a Post-Issuance Submission of Corrected Declaration and an executed Declaration, Power of Attorney, and Petition ("Supplemental Declaration"), with the USPTO (together with a Certificate of Mailing and a return postcard). Copies of the Post-Issuance Submission and the Supplemental Declaration are appended hereto as Exhibit H. A copy of the return postcard reflecting receipt of the noted documents at the USPTO on December 7, 2005 is appended hereto as Exhibit I.
31. As set forth in the Supplemental Declaration, the mailing address associated with the '854 Patent was formally changed to:

McCARTER & ENGLISH, LLP  
Attn.: Angelica Brooks  
CityPlace I  
185 Asylum Street  
Hartford, CT 06103

32. Notwithstanding the address change set forth in the Supplemental Declaration, the USPTO records were not updated as requested by Hayes.

Discovery of Lapse of '854 Patent and Responsive Actions

33. I was contacted by Hayes by telephone on November 16, 2011, because he had received a notice from a licensee that certain of his patents had lapsed. Hayes requested that I review the status of his "boric acid" patents and provide him with information concerning their expirations dates.
34. In response to my discussion with Hayes, I immediately advised Mr. Nabulsi by email of the issue raised by Hayes. Mr. Nabulsi was out of the country

participating as a speaker at an international patent conference in Japan. I then reviewed the information in the CPI docket system. Based on that review, it appeared that all of Hayes' patents were in good standing. However, based on my online review of the USPTO records, I determined that the '854 Patent was expired due to non-payment of the second maintenance fee. The information at the USPTO site was contrary to the information on the CPI docket system. I immediately contacted Mr. Nabulsi again by email requesting that he call me to discuss these initial findings.

35. Mr. Nabulsi and I spoke by telephone on November 16<sup>th</sup>, at which time Mr. Nabulsi instructed that I undertake a more thorough investigation as to the status of the '854 Patent and, in particular, why the USPTO records were inconsistent with the information in the CPI docket system. Mr. Nabulsi indicated that he would speak with Hayes and immediately flew back to the United States to review the status of the '854 Patent.
36. Both before Mr. Nabulsi's return from Japan and in consultation with Mr. Nabulsi upon his return, we researched the circumstances surrounding the failure to pay the second maintenance fee in November 2008, the docketing steps taken with respect to the '854 Patent, and the reason that we received no communications from the USPTO with respect to the delinquent maintenance fee for the '854 Patent. Mr. Nabulsi also engaged in the requisite research concerning the standards and requirements for reinstatement of the '854 Patent.
37. With respect to the non-existence of USPTO communications concerning the delinquent maintenance fee, we determined that the necessary information was not available at the USPTO website. Accordingly, we arranged for physical inspection of the USPTO files for the '854 Patent to determine why we had not received a

communication from the USPTO that the '854 Patent had entered the maintenance fee grace period and/or that the '854 Patent had lapsed.

38. A copy of the Maintenance Fee Reminder issued by the USPTO on February 2, 2009 is appended hereto as Exhibit J, and a copy of the Notice of Patent Expiration issued by the USPTO on August 24, 2009, is appended hereto as Exhibit K. Both of these documents were incorrectly mailed to C&L, despite the change of address set forth in the Supplemental Declaration more than three (3) years prior.
39. Based upon a thorough investigation, neither the Maintenance Fee Reminder nor the Notice of Patent Expiration was received by M&E from C&L. As a result, the opportunity to cure the above-noted error within the surcharge period or shortly after the '854 Patent lapsed was unavoidably missed through no fault of Hayes and/or his attorneys.
40. Had we received the Maintenance Fee Reminder from the USPTO that the second maintenance fee for the '854 Patent remained outstanding, I am certain that Mr. Nabulsi and I would have identified the error described above and taken prompt correction action to pay the second maintenance fee with surcharge.
41. Had we received the Notice of Patent Expiration from the USPTO that the second maintenance fee for the '854 Patent had not been timely paid, I am certain that Mr. Nabulsi and I would have identified the error described above and taken prompt correction action to promptly reinstate the '854 Patent within the applicable reinstatement period.

#### Conclusion

42. Based on the foregoing facts and circumstances, I believe that reasonable care was taken to ensure that the second maintenance fee for the '854 Patent would be paid timely, and that the failure to pay the second maintenance fee was unavoidable.

I, the undersigned, declare further that all statements made herein are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 9/10/2012

By: Joan Simmons

Joan Simmons

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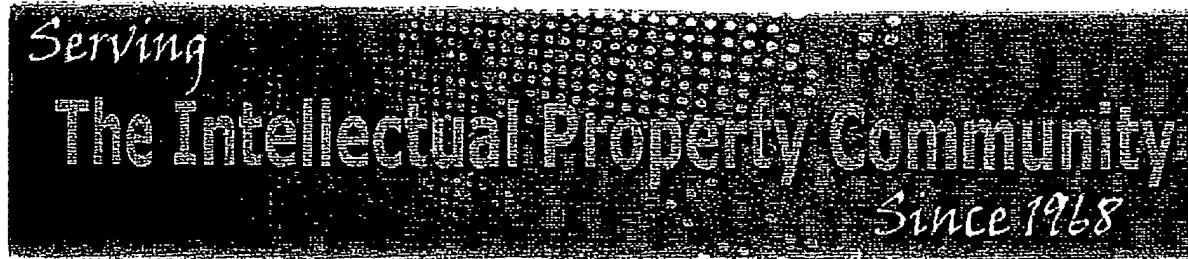
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**General Growth Properties, Inc.**

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Hinshaw & Culbertson	Barnes & Thornburg LLP
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CPi Patent and Trademark Systems Client List (cont.)

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Shook, Hardy & Bacon LLP	McCarter & English
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**PA**  
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Michael, Best & Friedrich LLP  
Quarles & Brady LLP  
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Trane Company  
Whyte, Hirschboeck & Dudek

06/30/12

## EXHIBIT C

**DATA REQUIRED FOR DOCKET ENTRY**

**Docket Number (number representing a client/matter)**

**Title of Invention**

**Inventor Names**

**Country**

**Case Type:**

**Responsible Attorneys**

**Application Serial No.**

**Filing Date:**

**Publication No.**

**Publication Date**

**Patent No.**

**Issue Date**

**Priority Serial No./Nos., if applicable**

**Confirmation No.**

**ME1 13910241v.]**

## EXHIBIT D

87681.00013	US	87681.00013	P02607
Hayes & Associates	United States of America	STFD	
Information Disclosure Stmt	10-Jul-2000	Due Date	10-Jul-2000
Foreign Filing Reminder	10-Oct-2000	Reminder	10-Oct-2000
Foreign Filing Due	10-Apr-2001	Due Date	10-Apr-2001
Application Status Check	10-Oct-2001	Due Date	10-Oct-2001
BROADENED REISSUE DL	24-Apr-2003	Due Date	23-Apr-2003
Reminder 1st MFEET due 1/24	24-Jul-2004	Reminder	26-Jul-2004
1ST MAINT FEE DUE	24-Jan-2005	Due Date	26-Jul-2004
1ST MAINT FEE DUE	24-Jul-2005	Final	26-Jul-2004
Follow up re entity status	04-Aug-2005	Due Date	03-Aug-2005
Revised Declaration Status	11-Dec-2005	Due Date	05-Dec-2005
Reminder 2nd MFEET due 1/24	24-Nov-2008	Reminder	23-Nov-2008
2ND MAINT FEE DUE	24-Jan-2009	Due Date	23-Nov-2008
2ND MAINT FEE DUE	24-Jul-2009	Final	23-Nov-2008
Reminder 3rd MFEET due 1/24	24-Jul-2012	Reminder	
3RD MAINT FEE DUE	24-Jan-2013	Due Date	
3RD MAINT FEE DUE	24-Jul-2013	Final	
Conversion	Racek	Date	06-Nov-2002
		Date	17-Jul-2009

## EXHIBIT E



**United States  
Patent and  
Trademark Office**

SEP 10 2012

RECEIVED  
SEP 14 2012**Deposit Account Statement**

OFFICE OF PETITIONS

**Requested Statement Month:** November 2008  
**Deposit Account Number:** 503570  
**Name:** MCCARTER & ENGLISH, LLC (CT)  
**Attention:** JOAN SIMMONS  
**Street Address 1:** 201 BROAD STREET  
**Street Address 2:**  
**City:** STAMFORD  
**State:** CT  
**Zip:** 06901  
**Country:** UNITED STATES

DATE SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
11/03 336	11705275	101904-00014	1806	\$180.00	\$30,345.00
11/03 1103	11705262	101904-00016	1806	\$180.00	\$30,165.00
11/03 1431	11705257	101904-00017	1806	\$180.00	\$29,985.00
11/03 1821	11705227	101904-00019	1806	\$180.00	\$29,805.00
11/03 2118	11705312	101904-00020	1806	\$180.00	\$29,625.00
11/03 2424	11705198	101904-00024	1806	\$180.00	\$29,445.00
11/03 13134	12263637	98121.00165	4011	\$82.00	\$29,363.00
11/03 13137	12263637	98121.00165	2202	\$78.00	\$29,285.00
11/03 13136	12263637	98121.00165	2311	\$110.00	\$29,175.00
11/03 13135	12263637	98121.00165	2111	\$270.00	\$28,905.00
11/03 45	PAYMENT		9203	-\$19,760.00	\$48,665.00
11/06 5165	11353475	97634.00202	1801	\$810.00	\$47,855.00
11/06 6465	5626768	98103.00025	2553	\$2,055.00	\$45,800.00
11/06 13229	61111839	101053-00013A	2005	\$110.00	\$45,690.00
11/07 3424	10047717	97634.00089	1801	\$810.00	\$44,880.00
11/07 4990	12218081	98121.00162	2251	\$65.00	\$44,815.00
11/07 4989	12218081	98121.00162	2051	\$65.00	\$44,750.00
11/10 1879	10894868	97634.00181	1801	\$810.00	\$43,940.00
11/10 10627	11027269	99560.00006	2251	\$65.00	\$43,875.00
11/10 10910	11784085	94350.00037	8021	\$40.00	\$43,835.00
11/12 21716	11581027	97634.00208	1501	\$1,510.00	\$42,325.00
11/12 21718	11581027	97634.00208	1504	\$300.00	\$42,025.00
11/12 25704	11731968	99689-00048	8021	\$40.00	\$41,985.00
11/13 2254	11119952	115190.00154	1501	\$1,510.00	\$40,475.00
11/13 2255	11119952	115190.00154	1504	\$300.00	\$40,175.00
11/13 6670	60755631	101448.00042	8021	\$80.00	\$40,095.00
11/13 6831	60755626	101448.00044	8021	\$80.00	\$40,015.00
11/14 1428	4908154	113664.00026	8021	\$160.00	\$39,855.00
11/14 1795	1368735	113664.00026	8521	\$40.00	\$39,815.00

11/17 10321 60755632	101448.00043	8021	\$80.00	\$39,735.00
11/17 14166 11817556	98015.00002	2617	\$65.00	\$39,670.00
11/17 14167 11817556	98015.00002	1618	\$130.00	\$39,540.00
11/18 1302 11355140	97634.00203	1504	\$300.00	\$39,240.00
11/18 1299 11355140	97634.00203	1501	\$1,510.00	\$37,730.00
11/18 13435 11786084	101142.00007	1806	\$180.00	\$37,550.00
11/19 7852 61115920	99726-00184	2005	\$110.00	\$37,440.00
11/19 10508 PCT/US08/83959	97895.00253	1602	\$1,800.00	\$35,640.00
11/19 10507 PCT/US08/83959	97895.00253	1601	\$300.00	\$35,340.00
11/19 10509 PCT/US08/83959	97895.00253	1702	\$1,338.00	\$34,002.00
11/20 2579 12206386	113952-00002	2051	\$65.00	\$33,937.00
11/21 353 11840024	94350.00044	8021	\$40.00	\$33,897.00
11/21 3238 11705227	101904-00019	1814	\$140.00	\$33,757.00
11/21 4710 6911519	98121.00080	2551	\$490.00	\$33,267.00
11/21 4750 6908900	101448.00019	2551	\$490.00	\$32,777.00
11/21 14736 12206298	97895.00240	1051	\$130.00	\$32,647.00
11/21 14737 12206298	97895.00240	1251	\$130.00	\$32,517.00
11/21 15640 12206318	97895.00256	1051	\$130.00	\$32,387.00
11/21 15641 12206318	97895.00256	1251	\$130.00	\$32,257.00
11/24 1988 12206386	113952-00002	8021	\$40.00	\$32,217.00
11/24 3712 12256084	94350.00064	8021	\$40.00	\$32,177.00
11/24 4766 12142883	94350.00056	8021	\$40.00	\$32,137.00
11/24 5414 12256084	94350.00064	2051	\$65.00	\$32,072.00
11/24 9555 6236136	99184.00007	1552	\$2,480.00	\$29,592.00
11/24 10623 6238591	97661.00013	1552	\$2,480.00	\$27,112.00
11/25 2085 12276806	72535	1311	\$220.00	\$26,892.00
11/25 2084 12276806	72535	1111	\$540.00	\$26,352.00
11/25 2083 12276806	72535	1011	\$330.00	\$26,022.00
11/25 3822 11189213	94350.00022	2801	\$405.00	\$25,617.00
11/25 3821 11189213	94350.00022	2251	\$65.00	\$25,552.00
11/26 2231 11027245	99560.00008	2251	\$65.00	\$25,487.00
11/26 2232 11027245	99560.00008	2801	\$405.00	\$25,082.00
START BALANCE	SUM OF CHARGES	SUM OF REPLENISH	END BALANCE	
\$30,525.00	\$25,203.00	\$19,760.00	\$25,082.00	

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## EXHIBIT F

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McCARTER  
& ENGLISH  
ATTORNEYS AT LAW

November 24, 2008

VIA REGULAR MAIL

Mr. Claude Q.C. Hayes  
Hayes & Associates  
3737 3<sup>rd</sup> Avenue, #308  
San Diego, CA 92103

Basam E. Nabulsi

Partner  
T. Telephone 203.965.0601  
bnabulsi@mccarter.com

Re: Payment of Second Maintenance Fee for:  
U.S. Patent No. 6,238,591  
Heat Absorbing Temperature Control Devices And Method (Boric Acid)  
Our Reference: 97661.00013

Mccarter & English, LLP  
Financial Centre, Suite 304A  
695 East Main Street  
Stamford, CT 06901  
T. 203.399.5900  
F. 203.399.5800  
[www.mccarter.com](http://www.mccarter.com)

Dear Claude:

Pursuant to your instructions, we have paid the second maintenance fee in connection with the above-referenced patent. Enclosed for your records are copies of (i) an online submission of payment of the second maintenance fee as filed with the U.S. Patent Office on November 24, 2008; and (ii) a Maintenance Fee Statement providing the current status of the subject patent.

The third maintenance fee will be due on January 24, 2013. We will send a reminder to you and request instructions for payment in due course.

In the meantime, if you have any questions, please feel free to contact me.

BOSTON

Very truly yours,



Basam E. Nabulsi

HARTFORD

BEN/js  
Enclosures

NEW YORK

NEWARK

PHILADELPHIA

STAMFORD

WILMINGTON

ME1 7916022v.1

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Page 1 of 2

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Patent and  
Trademark OfficeFinance  
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Page**Maintenance Fee Statement**

11/24/2008 07:56 AM EST

Patent Number: 6238591

Customer Number: 20845

CUMMINGS & LOCKWOOD  
FOUR STAMFORD PLAZA  
P O BOX 120  
STAMFORD CT 06904-0120

According to the records of the U.S. Patent and Trademark Office (USPTO), the maintenance fee and any necessary surcharge have been timely paid for the patent listed below. The "PYMT DATE" column indicates the payment date (i.e., the date the payment was filed).

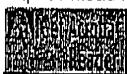
The payment shown below is subject to actual collection. If the payment is refused or charged back by a financial institution, the payment will be void and the maintenance fee and any necessary surcharge unpaid.

Direct any questions about this statement to: Mail Stop M Correspondence, Director of the USPTO, P.O.Box 1450, Alexandria, VA 22313-1450.

PATENT NUMBER	FEES AMT	SUR-CHARGE	PYMT DATE	U.S. APPLICATION NUMBER	PATENT ISSUE DATE	APPL. FILING DATE	PAYMENT YEAR	SMALL ENTITY?	ATTY DKT NUMBER
6,238,591	\$2,480.00	\$0.00	11/24/08	09/558,948	05/29/01	04/26/00	08	NO	97661.00013

Click [here](#) to obtain your Maintenance Fee Statement as a PDF.

Please note that in order to view your Maintenance Fee Statement as a PDF, you must have Adobe's Acrobat Reader installed. If you do not have it, download it for FREE!



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## EXHIBIT H

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97661.00013

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PATENT

SEP 14 2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF PETITIONS

In re Application of: )  
Claude Q.C. Hayes )  
Serial No.: 09/546,361 ) Patent No. 6,264,854  
Filed: April 10, 2000 ) Issue Date: July 24, 2001

**For: HEAT ABSORBING TEMPERATURE CONTROL DEVICES AND METHOD**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**POST-ISSUANCE SUBMISSION OF  
CORRECTED DECLARATION**

Sir:

Applicant respectfully requests that the enclosed Declaration, Power of Attorney and Petition (the "Declaration") be placed in the file of the above-referenced issued U.S. patent. The enclosed Declaration includes a priority claim pursuant to 35 USC §119(e) that conforms to the priority claim that appears on the face of the issued patent, namely a priority claim to provisional application, Serial No. 60/003,387 (filed September 7, 1995). Applicant submits this Declaration to address an error that appeared in a previously submitted Declaration, Power of Attorney and Petition dated April 7, 2000. No correction of the issued patent is required because the face of the patent correctly identifies the noted provisional patent application pursuant to 35 USC §119(e).

Applicant respectfully submits that authority for inclusion of the enclosed Declaration in the issued patent file is provided – by analogy – in 37 CFR 1.97(i).

Applicant submits that no fee is due in connection with this submission. However, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 50-3570. A DUPLICATE COPY OF THIS SHEET IS ENCLOSED.

Respectfully submitted,



Basam E. Nabulsi  
Reg. No. 31,645  
Attorney for Applicant

McCARTER & ENGLISH, LLP  
Four Stamford Plaza  
107 Elm Street  
Stamford, CT 06902  
(203) 399-5920

CERTIFICATE OF MAILING

I hereby certify that the Post-Issuance Submission of Corrected Declaration is being deposited with the United States Postal Service as first class mail, postage prepaid, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on December 5, 2005.

Dated: 12/5/05



Joan Simmons

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ATTORNEY DOCKET NO.: 97661.00013

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### Declaration, Power of Attorney, and Petition

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship is as stated below next to my name,

I believe I am an original joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

#### HEAT ABSORBING TEMPERATURE CONTROL DEVICES AND METHOD

the specification of which (*check one*)

is attached hereto; or

was filed on April 10, 2000 as Application Serial No. 09/546,361 and issued on July 24, 2001 as U.S. Patent No. 6,264,854; or

#### PCT FILED APPLICATION ENTERING NATIONAL STAGE

was described and claimed in International Application No. \_\_\_\_\_ filed on \_\_\_\_\_ and as amended on \_\_\_\_\_ (if applicable).

I hereby state that we have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above, and that it contains a full, clear, concise and exact description of the subject matter for which a patent is sought.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56(a).

#### Prior Application(s)

(Check if applicable) I hereby claim foreign priority benefits under Title 35, United States Code § 119, by checking the box(es) below, any foreign application(s) for patent or inventor's certificate, or PCT International application having a filing date before that of the application on which priority is claimed:

#### Prior Foreign Application(s)

Priority Claimed?

(Number)	(Country)	Day/month/year filed
(Number)	(Country)	Day/month/year filed

<input type="checkbox"/>	<input type="checkbox"/>
Yes	No
<input type="checkbox"/>	<input type="checkbox"/>
Yes	No

I hereby claim the benefit under Title 35, United States Code, § 119(e) of any United States provisional application(s) listed below:

Prior Provisional Application(s):

60/003,387 (Application Number):	September 7, 1995 (Filing Date):
(Application Number)	(Filing Date)
(Application Number)	(Filing Date)

(Note: When the nonprovisional application is entitled to an earlier U.S. effective filing date of one or more provisional applications under Title 35, United States Code § 119(e), a statement such as "This application claims the benefit of U.S. Provisional Application No. \_\_\_\_\_, filed \_\_\_\_\_, and U.S. Provisional Application No. \_\_\_\_\_, filed \_\_\_\_\_." should appear as the first sentence of the description. In view of this requirement, the right to rely on a prior application may be waived or refused by an applicant by refraining from inserting a reference to the prior application in the specification of the later one.)

(Check if applicable) I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I/we acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Prior U.S. Application(s)

08/709,516 (Application Serial No.)	September 6, 1996 (Filing Date)	abandoned Status (Patented, pending, abandoned)
(Application Serial No.)	(Filing Date)	Status (Patented, pending, abandoned)

(Check if applicable) I hereby authorize the U.S. attorneys or agents named herein to accept and follow instructions from \_\_\_\_\_ as to any action to be taken in the Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys or agents named herein and ourselves. In the event of a change, we will notify in writing the U.S. attorney or agent named herein.

(Check if applicable) In this continuation-in-part application, insofar as the subject matter of any of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, we acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

I hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby appoint the attorneys whose names are associated with United States Patent and Trademark Office Customer Number 21832:

Bar Code Above

Joseph Agostino, Reg. No. 51,191  
Eric E. Bleich, Reg. No. 47,430  
Raymond Cappo, Reg. No. 53,836  
Sanjiv M. Chokshi, Reg. No. 44,080  
Samuel J. DuBoff, Reg. No. 25, 969  
Mark D. Giarratana, Reg. No. 32,615  
Eric E. Grondahl, Reg. No. 46,741  
John K. Kim, Reg. No. 37,002

Troy J. LaMontagne, Reg. No. 47,239  
James J. Merrick, Reg. No. 43,801  
Basam E. Nabulsi, Reg. No. 31,645  
Ralph W. Selitto, Jr., Reg. No. 26,996  
William Smith, Reg. No. 46,459  
Paul F. Swift, Reg. No. 34,938  
Seth M. Wilson, Reg. No. 45,228  
Bryan Zerhusen, Reg. No. 54,566

all of the firm of McCARTER & ENGLISH, LLP, whose address is CityPlace I, 185 Asylum Street, Hartford, CT 06103 and as our attorneys with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

Please address all written correspondence to the following address:

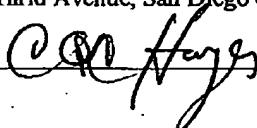
McCARTER & ENGLISH, LLP  
Attn.: Angelica Brooks  
CityPlace I  
185 Asylum Street  
Hartford, CT 06103

Telephone Calls should be directed to Basam E. Nabulsi, by dialing (203) 965-0601.

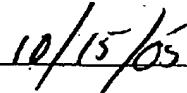
Wherefore I pray that Letters Patent be granted to us for the invention or discovery described and claimed in the foregoing specification and claims, and we hereby subscribe our names to the foregoing specification and claims, declaration, power of attorney, and this petition.

Full name of first inventor: Claude Q.C. Hayes  
Residence: 3737 Thrid Avenue, San Diego CA 92103  
Citizenship: USA  
Post Office Address: 3737 Thrid Avenue, San Diego CA 92103

First Inventor's signature



Date



ME1\5284636.1

# EXHIBIT I

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Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
Sir: Kindly acknowledge receipt of the following papers by stamping and returning this card.

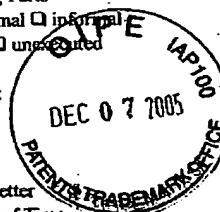
PATENT

Serial No: 09/54,361 Filing Date: 4/10/2000 Atty: BEN Client No: 97661.00013

Title: Heat Absorbing Temperature Control Devices and Method Due Date: \_\_\_\_\_

A patent application including pages of abstract and specifications and claims  
 (Continuation) (Divisional) (CIP) (Provisional) (Utility) (CPA) (Complete) (Design) Application  
 Response to Notice to File Missing Parts  
 Copy of Notice to File Missing Parts  
 \_\_\_\_\_ sheets of drawings  formal  informal  
 Declaration/POA  executed  unexecuted  
 Assignment  
 Recordation Form Cover Sheet  
 Application Transmittal Letter  
 Preliminary Amendment  
 Amendment  
 Amendment Fee Transmittal Letter  
 Petition and Fee for Extension of Time  
 Information Disclosure Statement  
 PTO Form 1449 and Copies of Cited References (\_\_\_\_\_  
 Issue Fee Transmittal  
 Submission of Formal Drawings  
 Maintenance Fee

Certificate Under 37 CFR § 3.73(b)  
 Revocation And Substitute Power of Attorney  
 Associate Power of Attorney  
 Priority Document  
 PCT Request  
 PCT Demand  
 PCT Power of Attorney  
 PCT Transmittal Letter  
 PCT Fee Calculation Sheet  
 PCT Response to Invitation to Correct Defects  
 Post-Issuance Submission of Corrected Declaration  
 \_\_\_\_\_  
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 \_\_\_\_\_  
 Check in the amount of \_\_\_\_\_  
 Certificate of Mailing  
 Certificate of Express Mailing  
No. \_\_\_\_\_  
 Return postcard  
Date 12/5/05



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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

PAYOR NUMBER  
20845

P75M

DATE PRINTED

02/02/09

CUMMINGS & LOCKWOOD  
FOUR STAMFORD PLAZA  
P O BOX 120  
STAMFORD CT 06904-0120

### MAINTENANCE FEE REMINDER

According to the records of the U.S. Patent and Trademark Office (USPTO) the maintenance fee for the patent(s) listed below (for which the above address is on record as the fee address under 37 CFR 1.363) has not been paid within the six-month period set forth in 37 CFR 1.362(d).  
**THE MAINTENANCE FEE MAY STILL BE PAID WITH THE APPLICABLE SURCHARGE SET FORTH IN 37 CFR 1.20(h), WITHIN THE SIX-MONTH GRACE PERIOD SET FORTH IN 37 CFR 1.362(e).**

Unless payment of the maintenance fee and the applicable surcharge is received in the USPTO within the six-month grace period, **THE PATENT WILL EXPIRE AS OF THE END OF THE GRACE PERIOD.** 35 U.S.C. 41(b).

The total payment due is the amount required on the date the fee is paid (and not necessarily the amount indicated below). All USPTO fees (including maintenance fees) are subject to change. Customers should refer to the USPTO Web site ([www.uspto.gov](http://www.uspto.gov)) or call the Maintenance Fee Branch at 571-272-6500 for the most current fee amounts for the correct entity status before submitting payment. The total payment due indicated below is based on the entity status according to current Office records (shown below).

Timely payment of the total payment due is required in order to avoid expiration of the patent. A maintenance fee payment can be timely made using the certificate of mailing or transmission procedure set forth in 37 CFR 1.8.

U.S. PATENT FEE MAINT.	APPL. NUMBER	PATENT ISSUE DATE	APPL. FILING DATE	PAY- MENT SMALL ENTITY?	TOTAL PYMT DUE	ATTORNEY DOCKET NUMBER
6264854	2480 130	09546361	07/24/01	04/10/00 8	NO	2610 P-5534-18

The maintenance fee and the applicable surcharge can be paid quickly and easily over the Internet at [www.uspto.gov](http://www.uspto.gov) by electronic funds transfer (EFT), credit card, or USPTO deposit account payment methods. The mailing address for all maintenance fee payments not electronically submitted over the Internet is: U.S. Patent and Trademark Office, P.O. Box 979070, St. Louis, MO 63197-9000.

Direct any questions about this notice to: Mail Stop M Correspondence, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

NOTE: This notice was automatically generated based on the amount of time that elapsed since the date a patent was granted. It is possible that the patent term may have ended or been shortened due to a terminal disclaimer that was filed in the application. Also, for any patent that issued from an application filed on or after June 8, 1995 containing a specific reference to an earlier filed application or applications under 35 U.S.C. 120, 121, or 365(c), the patent term ends 20 years from the date on which the earliest such application was filed, unless the term was adjusted or extended under 35 U.S.C. 154 or 156. Patentee should determine the relevant patent term for a patent before paying the maintenance fee.

MF4401 (7/2007)

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Alexandria, VA 22313-1450  
www.uspto.gov

PAYER NUMBER  
20845

P75M

CUNNINGHAM & LOCKWOOD  
FOUR STAMFORD PLAZA  
P O BOX 120  
STAMFORD CT 06904-0120

DATE PRINTED

08/24/09

### NOTICE OF PATENT EXPIRATION

According to the records of the U.S. Patent and Trademark Office (USPTO), payment of the maintenance fee for the patent(s) listed below has not been received timely prior to the end of the six-month grace period in accordance with 37 CFR 1.362(e). THE PATENT(S) LISTED BELOW HAS THEREFORE EXPIRED AS OF THE END OF THE GRACE PERIOD. 35 U.S.C. 41(b). Notice of the expiration will be published in the USPTO Official Gazette.

Expired patents may be reinstated in accordance with 37 CFR 1.378 if upon petition, the maintenance fee and the surcharge set forth in 37 CFR 1.20(i) are paid, AND the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable or unintentional. 35 U.S.C. 41(c)(1).

If the Director accepts payment of the maintenance fee and surcharge upon petition under 37 CFR 1.378, the patent shall be considered as not having expired but would be subject to the intervening rights and conditions set forth in 35 U.S.C. 41(c)(2).

For instructions on filing a petition under 37 CFR 1.378 to reinstate an expired patent, customers should call the Office of Petitions Help Desk at 571-272-3282 or refer to the USPTO Web site at [www.uspto.gov/web/offices/pac/dapp/petitionspractice.html](http://www.uspto.gov/web/offices/pac/dapp/petitionspractice.html). The USPTO also permits reinstatement under 37 CFR 1.378(c) by electronic petition (e-petition) using EFS-Web; e-petitions may be automatically granted if all the eligibility requirements are met. For further information on filing an e-petition, please call the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100 or refer to the EBC's e-petition guide at [www.uspto.gov/ebc/portal/efs/petition\\_quickstart.pdf](http://www.uspto.gov/ebc/portal/efs/petition_quickstart.pdf).

U.S. PATENT NUMBER	APPLICATION NUMBER	PATENT ISSUE DATE	APPLICATION FILING DATE	EXPIRATION DATE	ATTORNEY DOCKET NUMBER
6264854	09546361	07/24/01	04/10/00	07/24/09	P-5534-18

NOTE: This notice was automatically generated based on the amount of time that elapsed since the date a patent was granted. It is possible that the patent term may have ended or been shortened due to a terminal disclaimer that was filed in the application. Also, for any patent that issued from an application filed on or after June 8, 1995 containing a specific reference to an earlier filed application or applications under 35 U.S.C. 120, 121, or 365(c), the patent term ends 20 years from the date on which the earliest such application was filed, unless the term was adjusted or extended under 35 U.S.C. 154 or 156.

MA441D (11/2008)

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SEP 10 2012

97661.00013

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:  
Claude Q.C. Hayes  
Patent No: 6,264,854  
Issue Date: July 24, 2001

For: **HEAT ABSORBING TEMPERATURE CONTROL DEVICES AND METHOD**

Commissioner for Patents  
Mail Stop Petition  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SUPPLEMENTAL DECLARATION OF BASAM E. NABULSI IN SUPPORT OF  
PETITION UNDER 37 C.F.R. 1.378(b) TO ACCEPT UNAVOIDABLY DELAYED  
PAYMENT OF MAINTENANCE FEE AND TO REINSTATE PATENT**

I, Basam E. Nabulsi, do hereby declare as follows:

1. I am a partner with the law firm McCarter & English, LLP ("M&E") and have been a partner with M&E since October 1, 2003, and I previously executed a Declaration of Basam E. Nabulsi in Support of Petition Under 37 C.F.R. 1.378(b) to Accept Unavoidably Delayed Payment of Maintenance Fee and To Reinstate Patent on February 2, 2012 ("Initial Declaration") in connection with the patentee's Petition to Reinstate U.S. Patent No. 6,264,852 to Hayes (the "'854 Patent").
2. In preparing this Supplemental Declaration, I have reviewed a Declaration of Joan Simmons in Support of Petition Under 37 C.F.R. 1.378(b) to Accept Unavoidably Delayed Payment of Maintenance Fee and To Reinstate Patent executed on September 10, 2012 ("Simmons Declaration").
3. Since January 1989, when I joined U.S. Surgical Corporation ("USSC") as a patent attorney, I have worked extensively with Joan Simmons in connection with my legal

MEI 14086037v.1

practice. Shortly after I left USSC to become a partner at C&L, Ms. Simmons joined me at C&L.

4. In October 2003, Ms. Simmons and I departed C&L and joined M&E as founding members of M&E's Stamford, CT office. M&E had an existing patent practice and we migrated the docket information for clients that moved with us from C&L to M&E into M&E's computerized docket system.
5. Since October 2003 -- when I joined M&E -- to the present, Ms. Simmons has been responsible for tracking deadlines related to Office Actions, Notices of Allowance, maintenance fees, foreign annuities and other docketed dates associated with filing, prosecution and maintenance of patents and patent applications that are managed by or originated from M&E's Stamford office, including specifically deadlines associated with my clients' files.
6. Since October 2003 -- when I joined M&E -- to the present, M&E has utilized a computerized docket system that is licensed from Computer Packages, Inc. ("CPI") to docket and track patent prosecution and renewal fee deadlines for the totality of the patent portfolio managed by M&E across its seven (7) offices, including specifically the patent portfolio managed from the Stamford office.
7. In my judgment and experience, Ms. Simmons is intimately familiar with the operation and use of M&E's CPI docket system and electronic submissions to the USPTO, including specifically electronic payment of maintenance fees. In addition, Ms. Simmons receives ongoing CPI docket system training from CPI trainers.
8. In my judgment and experience, Ms. Simmons has accurately and independently docketed thousands of application deadlines and successfully coordinated maintenance fee payments for many hundreds of patents on behalf of M&E clients, including specifically maintenance fees for my clients' patents.

9. In my judgment and experience, the CPI docket system is a reliable tool for managing patent-related deadlines. The CPI docket system allows users to generate reports in various formats, thereby permitting the data, e.g., upcoming deadlines, to be sorted and/or filtered into actionable subparts. For example and at my request, Ms. Simmons routinely generates reports based upon date ranges, responsible attorney, action type, client name, and combinations thereof. In this way, the CPI docket system supports effective monitoring of upcoming deadlines and patent-related actions.
10. Since at least early 2006, Ms. Simmons has been primarily responsible for entering relevant information into the CPI docket system to establish and track patent-related deadlines with respect to my clients' files. In Ms. Simmons' absence, the Stamford office includes a second, fully trained docket clerk who handles docket responsibilities. We also have the ability to utilize fully trained docket clerks who are physically located in other M&E offices (Boston, MA; Hartford, CT; Newark, NJ; Wilmington, DE) on an as-needed basis. Prior to early 2006, docketing responsibility for my clients' files was handled by a docket clerk physically located in M&E's Hartford, CT office.
11. Ms. Simmons is and was the individual responsible for maintenance fee payment and docket entries associated with the '854 Patent.
12. I have standing instructions from Mr. Hayes to maintain all of his patents and patent applications, including by way of prompt payment of all applicable maintenance fees. Mr. Hayes' standing instructions extended to the second maintenance fee for the '854 Patent.
13. I have reviewed Ms. Simmons' explanation as to the sequence of events surrounding non-payment of the second maintenance fee for the '854 Patent. I have also independently reviewed all relevant documents and, in my judgment, Ms.

Simmons' explanation is accurate and complete as to why the second maintenance fee for the '854 Patent was not paid in a timely manner.

14. On November 24, 2008, I reviewed and executed a reporting letter prepared by Ms. Simmons that incorrectly reported payment of the second maintenance fee for the '854 Patent. I failed to identify the error inherent in this reporting letter, and the reporting letter was forwarded to Claude Q.C. Hayes under my signature on November 24, 2008. A copy of the reporting letter is appended to the Simmons Declaration as Exhibit F.
15. It was my responsibility to act as a "cross check" with respect to the second maintenance fee payment for the '854 Patent when reviewing and executing the November 24<sup>th</sup> reporting letter to Mr. Hayes. I do not sign reporting letters to clients unless I am also provided with the entire file for the relevant matter and all enclosures for the proposed correspondence. Accordingly, I would have been provided with the entire file for the '854 Patent together with relevant enclosures for the proposed reporting letter by Ms. Simmons. Unfortunately, I did not recognize the disconnect between the subject heading of the reporting letter and the physical file that was provided to me with the reporting letter, nor did I recognize that the maintenance fee printout contained in the physical file related to a different Hayes patent, i.e., the '591 Patent.
16. If I had noted a discrepancy in connection with the November 24<sup>th</sup> reporting letter for the '854 Patent, I would have immediately addressed the inconsistency with Ms. Simmons.
17. Ms. Simmons and I review docket reports on a frequent basis – almost daily – to ensure that deadlines are being addressed in a timely fashion.
18. As set forth in the Simmons Declaration, the mistaken non-payment of the second maintenance fee for the '854 Patent was based on Ms. Simmons' incorrect

identification of the maintenance fee paid on Sunday, November 23, 2008, which led to removal of the docketed deadlines associated with such payment from M&E's docket system.

19. I was advised by Ms. Simmons by email on November 16, 2011, of a potentially lapsed patent of Mr. Hayes. I was out of the country participating as a speaker at an international patent conference in Japan, and spoke to Ms. Simmons by telephone concerning the issue. At the time of our conversation, Ms. Simmons had determined that there was a potential issue with the '854 Patent based on information at the U.S. Patent and Trademark Office ("USPTO") website that conflicted with information in the CPI docket system maintained by M&E.
20. I instructed Ms. Simmons to undertake an investigation as to the status of the '854 Patent and, in particular, why the USPTO records were inconsistent with the information in the CPI docket system. After my conversation with Ms. Simmons, I spoke with Mr. Hayes by telephone, explaining that there was a potential issue with the '854 Patent and that we were conducting an immediate and full investigation. I then immediately flew back to the United States to work with Ms. Simmons to address the status of the '854 Patent.
21. Upon my return to the office, it had been determined that the second maintenance fee for the '854 Patent had not been paid in November 2008, as previously believed. I worked with Ms. Simmons to research the circumstances surrounding the failure to pay the second maintenance fee in November 2008, the docketing steps taken with respect to the '854 Patent, and the reason that we received no communications from the USPTO with respect to the delinquent maintenance fee for the '854 Patent. I also engaged in the requisite research concerning the standards and requirements for reinstatement of the '854 Patent.

22. As noted by Ms. Simmons, had we received the Maintenance Fee Reminder from the USPTO that the second maintenance fee for the '854 Patent remained outstanding, I am certain that Ms. Simmons and I would have identified the error described above and taken prompt correction action to pay the second maintenance fee with surcharge.
23. As also noted by Ms. Simmons, had we received the Notice of Patent Expiration from the USPTO that the second maintenance fee for the '854 Patent had not been timely paid, I am certain that Ms. Simmons and I would have identified the error described above and taken prompt correction action to promptly reinstate the '854 Patent within the applicable reinstatement period.
24. Based on the foregoing facts and circumstances, as well as the facts and circumstances set forth in the Initial Declaration and the Simmons Declaration, I believe that reasonable care was taken to ensure that the second maintenance fee for the '854 Patent would be paid timely, and that the failure to pay the second maintenance fee was unavoidable.

I, the undersigned, declare further that all statements made herein are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: September 10, 2012

By:   
Basam E. Nabulsi